

APPEAL NO. 031816
FILED AUGUST 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 9, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability beginning May 11, 2002, and continuing through the date of the CCH; that the claimant timely notified his employer under Section 409.001; and that the carrier has not waived the right to contest compensability of the claimed injury because it timely contested the injury under Section 409.021. The appellant (carrier) appealed, disputing the determinations regarding date of injury, timely notification to the employer, compensable injury, and disability. The claimant responded, urging affirmance. The determination regarding carrier waiver was not appealed and therefore has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The name of the first carrier witness listed in the hearing officer's decision is reformed to reflect a name of DF. TT was the second carrier witness to testify at the CCH.

The claimant testified that he was injured when he fell onto a flat bed trailer and then onto the ground while removing a tarp from a load of sheetrock. The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10); that he has had disability as defined by Section 401.011(16); and that he timely notified his employer of an injury pursuant to Section 409.001, or had good cause for failing to timely notify his employer of an injury. The hearing officer determined that the date of injury is _____. Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier argues that the hearing officer erred in finding the extent of injury because extent of injury was not an issue before the hearing officer. Finding of Fact No. 5 states: "On _____, Claimant sustained contusion injuries to his right wrist, right knee, right hip, right elbow, right shoulder, abdomen lumbar region and cervical region in the course and scope of his employment." A review of the record reflects that there was no issue on extent of injury. We have encouraged hearing officers to indicate

the nature of the injury when determining whether an injury existed. However, we have also stated that it is not appropriate for a hearing officer to make a final determination on the issue of extent of injury when the issue of extent of injury is not before the hearing officer. See Texas Workers' Compensation Commission Appeal No. 001239, decided July 13, 2000, and Texas Workers' Compensation Commission Appeal No. 002898, decided January 29, 2001. As we have done in earlier cases, we consider the challenged finding to be beyond the scope of the issue before him. We reform Finding of Fact No. 5 to read as follows: On _____, Claimant sustained contusion injuries in the course and scope of his employment. This is not to say that the injury is necessarily limited to a contusion.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY AND GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge